

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

SECOND APPEAL No.1298 of 2018

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree, dated 27.06.2018, in A.S.No.50 of 2016, passed by the learned II Additional District Judge, Hindupur, confirming the judgment and decree, dated 23.01.2016 passed by the learned Senior Civil Judge, Hindupur, dismissing O.S.No.174 of 2011 filed by the appellant herein for specific performance of agreement of sale, dated 30.04.2011.

The facts of the case are that the respondents/defendants agreed to sell the suit schedule property to the appellant/plaintiff for a total consideration of Rs.2,65,200/- and thereby, executed an agreement of sale, dated 30.04.2011, in her favour, on payment of Rs.50,000/- towards part sale consideration and after securing the balance sale consideration, she asked the respondents for execution of the sale deed, but, they did not do so and further, they were trying to sell the suit property to the third parties. Hence, the appellant/plaintiff issued a legal notice, dated 12.10.2011 calling upon the respondents/defendants to come forward to execute sale deed after receiving the balance sale

consideration of Rs.2,15,200/-. As the respondents did not issue any reply, the appellant/plaintiff filed the aforesaid suit.

The trial Court on appreciation of the oral and documentary evidence, having recorded a finding that the appellant was not ready and willing to perform her part of the contract as she is required to obtain sale deed by paying the balance sale consideration within a period of three months, as stipulated in the agreement of sale, having followed the principle that time is the essence of the contract and having relied on the judgment of the Apex Court in **Coromandel Indag Products (P) Ltd., v. Garuda Chit & Trading Co. P. Ltd., and another¹** as well as the judgment of this Court in **Baddam Prathap Reddy v. Chennadi Jalapathi Reddy²**, dismissed the suit vide judgment, dated 23.01.2016.

Aggrieved by the above, the plaintiff filed A.S.No.50 of 2016 before the lower appellate Court, which in turn, after referring to a large number of decided cases, wherein the Courts have repeatedly held that in the case where the agreement of sale stipulates a time within which the respective parties have to perform the contract, the same has to be construed as stipulation of definite time and as there is no scope for coming to the

¹ (2011) Supreme (SC) 773

² (2008) 5 ALD 200

conclusion that time is not the essence of the contract, dismissed the appeal suit by the impugned judgment and decree, confirming the judgment and decree, dated 23.01.2016 passed by the trial Court in O.S.No.174 of 2011. It is to be noted that the lower appellate Court refused to grant the relief with regard to the refund of part sale consideration amount to the appellant, as she did not sought such relief before the trial Court.

In the case on hand, learned counsel for the appellant prays for ordering notice to the respondents/defendants, but, considering the fact that O.S.No.174 of 2011 filed by the appellant was dismissed and that the respondents had not filed any costs memo in the O.S. as well as A.S.No.50 of 2016, this Court is not inclined to issue notice to them.

It is to be noted that both the Courts below on appreciation of the material on record, recorded a concurrent finding that the appellant/plaintiff was not ready and willing to perform her part of the contract. In the circumstances, this Court finds that no substantial question of law arises for consideration in this Second Appeal.

Accordingly, this Second Appeal is dismissed.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

5th SEPTEMBER, 2018.

kvni

